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<b>Notice of Allowability</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/041,846	SASAKI ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Michael La Villa	1775	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--  
All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to RCE and amendment filed on 5/31/05.
2. ☒ The allowed claim(s) is/are 1-11.
3. ☒ The drawings filed on 23 October 2001 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All    b) ☐ Some\*    c) ☐ None    of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
  - \* Certified copies not received: \_\_\_\_\_.


Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
  - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

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|---|--|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892)  | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                | 6. <input type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date _____. |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),<br>Paper No./Mail Date _____ | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment                    |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material          | 8. <input type="checkbox"/> Examiner's Statement of Reasons for Allowance              |
|   | 9. <input type="checkbox"/> Other _____.   |

  
MICHAEL E. LAVILLA PH.D.  
PRIMARY EXAMINER

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### **EXAMINER'S AMENDMENT**

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.
2. The application has been amended as follows:
3. Please cancel Claims 12-17.

### **EXAMINER'S COMMENT**

4. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 5/31/05 has been entered.
5. This application is in condition for allowance except for the presence of claims 12-17 to an invention non-elected without traverse. Accordingly, claims 12-17 have been cancelled.
6. In traversing the rejections over Safinya USP 6,358,523 and Firestone USP 6,537,575, applicant argues that the disclosures of these prior art references do not teach the claimed structural feature of "each lipid bilayer molecule layered upon another lipid bilayer molecule, in a stacked columnar structure of . . .

Angstroms in diameter,” as set forth in Claim 1. Applicant’s argument focuses on the meaning of the phrase “stacked columnar structure.”

7. At page 5 of the Response of 31 May 2005, applicant provides an analysis of the meaning of this phrase. Applicant points to a dictionary definition of “column,” which describes a column as being a pillar having a “cylindrical shaft.” Moreover, applicant repeatedly characterizes the claimed structure as requiring “rod-like” geometry. At the last sentence of page 5 of the Response of 31 May 2005, applicant explains that “the columnar structure of the material of the present invention is implicitly and approximately cylindrical.” It can be further understood that the claimed structure, in view of the additional language that imposes a maximum diameter value, requires that the cross-sectional geometry of the stacked columnar structure be characterized by a diameter dimension. To have a diameter requires a circular or approximately circular cross-section.
8. None of the prior art of record, nor the reviewed prior art, including Safinya nor Firestone, teaches or suggests lipid bilayer materials having the stacked columnar structure as claimed. Hence, Claims 1-11 are allowed.

### **CONCLUSION**


9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael La Villa whose telephone number is (571) 272-1539. The examiner can normally be reached on Monday through Friday.

Art Unit: 1775

10. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Deborah Jones can be reached on (571) 272-1535. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

11. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Michael La Villa  
15 June 2005

  
MICHAEL E. LAVILLA PH.D.  
PRIMARY EXAMINER